

COUNCIL POLICY**CURRENT**

SUBJECT: ACCEPTANCE OF SURETY BONDS
POLICY NO.: 800-08
EFFECTIVE DATE: August 4, 2003

BACKGROUND:

Construction is an inherently risky business with a relatively high rate of business failure. For primarily that reason, and to protect the City treasury, the City's credit rating, and the public health and safety, it is prudent for the City to obtain financial security from contractors and developers to guarantee that construction of public works are completed in the event a contractor or developer is unable to finish a project. In administering City contracts for public works and issuing permits for construction of public improvements, three general categories of surety bonds are typically required: bid bonds, performance bonds, and payment bonds.

Section 94 of the San Diego Charter [Charter] requires that each bidder furnish with any bid such security as shall be specified by City Council and, when a contract exceeds \$100,000, that the contractor furnish a faithful performance bond in the amount specified by City Council. The Charter further requires that all contracts require a retention of payments sufficient to ensure protection of the City against labor or material liens. While not required by Charter, a payment bond for the full contract amount has been utilized to ensure this requirement as well as retaining between 5 percent and 10 percent of the earned contract payment.

In addition to the administration of City contracts for public works, pursuant to requirements contained in the San Diego Municipal Code in some instances, or as a matter of policy and practice in other instances, the City will require applicants for development permits, use permits, or agreements to provide security in the form of a performance bond.

POLICY:

It is the policy of The City of San Diego to adhere to the following bonding requirements for acceptance of surety bonds.

PURPOSE:

It is the policy of the City of San Diego to adhere to the following bonding requirements:

A. Acceptance of Bonds for Public Works Contracts

1. In the course of implementing any contract for public works being funded with state or local money, consistent with California Code of Civil Procedure section 995.670, anytime a bid bond, payment bond, or performance bond is furnished to the City

pursuant to a requirement for the posting of the bond imposed by California state law, the Charter, or the San Diego Municipal Code, a bond presented in the proper amount shall be accepted so long as the Surety is an "Admitted Surety" authorized by the State of California Department of Insurance to transact surety insurance in the State of California.

2. In the course of implementing any contract for public works being funded with federal money, anytime a bid bond, payment bond, or performance bond is furnished to the City, a bond presented in the proper amount shall be accepted so long as the Surety is listed in the U.S. Treasury Department Circular 570 and in conformance with the Underwriting Limitations as expressed therein.
3. In the course of implementing any contract for public works, anytime a bid bond, payment bond, or performance bond is required to be furnished to the City under circumstances which do not fall under paragraphs 1 or 2 above (e.g., the bond is not required by California state statute, the Charter, or the San Diego Municipal Code but only by the terms of the contract), a bond presented in the proper amount shall be accepted by the City so long as the Surety is an "Admitted Surety" authorized by the State of California Department of Insurance to transact surety insurance in the State of California **and** the Surety is rated, Class A- or higher by A.M. Best, Key Rating Guide to an amount not to exceed 10 percent of its capital and surplus.

B. Acceptance of Bonds for Development and Use Permits

1. In the course of satisfying the conditions and requirements of any development permit, development or use agreement, or any other entitlement issued or granted by the City, consistent with California Code of Civil Procedure section 995.670, anytime a bid bond, payment bond, or performance bond is furnished to the City pursuant to a requirement for the posting of the bond imposed by California state law, the Charter, or the San Diego Municipal Code, a bond presented in the proper amount to the City shall be accepted so long as the Surety is an "Admitted Surety" authorized by the State of California Department of Insurance to transact surety insurance in the State of California.
2. In the course of satisfying the conditions and requirements of any development permit, development or use agreement, or any other entitlement issued or granted by the City under circumstances which do not fall under paragraph 1 above (e.g., the bond is not required by California state statute or City ordinance) the bond presented to the City shall be accepted by the City so long as the Surety is an "Admitted Surety" authorized by the State of California Department of Insurance to transact surety insurance in the State of California **and** the Surety is rated, Class A- or higher by A.M. Best, Key Rating Guide to an amount not to exceed 10 percent of its capital and surplus.

The City reserves the right to object to the sufficiency of any insurer in accordance with the process prescribed in the California Code of Civil Procedure sections 995.610 - 995.675. Nothing in this Policy should be construed as a waiver of that right.

HISTORY:

Adopted by Resolution R-215896 05/05/1976

Amended by Resolution R-220828 05/08/1978

Amended by Resolution R-298292 08/04/2003